

FIRST REGULAR SESSION

# SENATE BILL NO. 551

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS CROWELL AND SCHAEFER.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2235S.01I

## AN ACT

To repeal sections 217.362, 558.019, and 559.115, RSMo, and to enact in lieu thereof three new sections relating to drug offenses, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 217.362, 558.019, and 559.115, RSMo, are repealed

2 and three new sections enacted in lieu thereof, to be known as sections 217.362,  
3 558.019, and 559.115, to read as follows:

217.362. 1. The department of corrections shall design and implement an  
2 intensive long-term program for the treatment of **any** chronic nonviolent  
3 **[offenders] offender** with serious substance abuse addictions who **[have] has** not  
4 pleaded guilty to or been convicted of a dangerous felony as defined in section  
5 556.061, RSMo, **or any offense for which the offender is not eligible for**  
6 **probation or parole, and who has:**

7 (1) Pleased guilty to or been found guilty of two prior felonies;  
8 **or**

9 (2) Completed a program under section 217.785 or section  
10 559.115, RSMo, for an offense involving methamphetamine, its salts,  
11 isomers, and salts of isomers, or a methamphetamine precursor drug as  
12 defined in section 195.010, RSMo, and has subsequently:

13 (a) Pleased guilty to or been found guilty of violating the  
14 provisions of chapter 195, RSMo; or

15 (b) Violated the terms of probation and whose controlled  
16 substance abuse was a precipitating or contributing factor in the  
17 commission of the probation violation.

18 2. Prior to sentencing, any judge considering an offender for this program

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 shall notify the department. The potential candidate for the program shall be  
20 screened by the department to determine eligibility. The department shall, by  
21 regulation, establish eligibility criteria and inform the court of such criteria. The  
22 department shall notify the court as to the offender's eligibility and the  
23 availability of space in the program. Notwithstanding any other provision of law  
24 to the contrary, except as provided for in section 558.019, RSMo, if an offender  
25 is eligible and there is adequate space, the court may sentence a person to the  
26 program which shall consist of institutional drug or alcohol treatment for a period  
27 of at least twelve and no more than twenty-four months, as well as a term of  
28 incarceration. The department shall determine the nature, intensity, duration,  
29 and completion criteria of the education, treatment, and aftercare portions of any  
30 program services provided. Execution of the offender's term of incarceration shall  
31 be suspended pending completion of said program. Allocation of space in the  
32 program may be distributed by the department in proportion to drug arrest  
33 patterns in the state. If the court is advised that an offender is not eligible or  
34 that there is no space available, the court shall consider other authorized  
35 dispositions.

36         3. Upon successful completion of the program, the board of probation and  
37 parole shall advise the sentencing court of an offender's probationary release date  
38 thirty days prior to release. If the court determines that probation is not  
39 appropriate the court may order the execution of the offender's sentence.

40         4. If it is determined by the department that the offender has not  
41 successfully completed the program, or that the offender is not cooperatively  
42 participating in the program, the offender shall be removed from the program and  
43 the court shall be advised. Failure of an offender to complete the program shall  
44 cause the offender to serve the sentence prescribed by the court and void the right  
45 to be considered for probation on this sentence.

46         [5. An offender's first incarceration in a department of corrections  
47 program pursuant to this section prior to release on probation shall not be  
48 considered a previous prison commitment for the purpose of determining a  
49 minimum prison term pursuant to the provisions of section 558.019, RSMo.]

558.019. 1. This section shall not be construed to affect the powers of the  
2 governor under article IV, section 7, of the Missouri Constitution. This statute  
3 shall not affect those provisions of section 565.020, RSMo, section 558.018 or  
4 section 571.015, RSMo, which set minimum terms of sentences, or the provisions  
5 of section 559.115, RSMo, relating to probation.

6           2. The provisions of subsections 2 to 5 of this section shall be applicable  
7 to all classes of felonies except those set forth in chapter 195, RSMo, **unless such**  
8 **offenses involve methamphetamine, its salts, its isomers, or a**  
9 **methamphetamine precursor drug as defined in section 195.010, RSMo,**  
10 and those otherwise excluded in subsection 1 of this section. For the purposes of  
11 this section, "prison commitment" means and is the receipt by the department of  
12 corrections of an offender after sentencing. For purposes of this section, prior  
13 prison commitments to the department of corrections shall not include  
14 commitment to a regimented discipline program established pursuant to section  
15 217.378, RSMo. Other provisions of the law to the contrary notwithstanding, any  
16 offender who has pleaded guilty to or has been found guilty of a felony other than  
17 a dangerous felony as defined in section 556.061, RSMo, and is committed to the  
18 department of corrections shall be required to serve the following minimum  
19 prison terms:

20           (1) If the offender has one previous prison commitment to the department  
21 of corrections for a felony offense, the minimum prison term which the offender  
22 must serve shall be forty percent of his or her sentence or until the offender  
23 attains seventy years of age, and has served at least thirty percent of the  
24 sentence imposed, whichever occurs first;

25           (2) If the offender has two previous prison commitments to the  
26 department of corrections for felonies unrelated to the present offense, the  
27 minimum prison term which the offender must serve shall be fifty percent of his  
28 or her sentence or until the offender attains seventy years of age, and has served  
29 at least forty percent of the sentence imposed, whichever occurs first;

30           (3) If the offender has three or more previous prison commitments to the  
31 department of corrections for felonies unrelated to the present offense, the  
32 minimum prison term which the offender must serve shall be eighty percent of  
33 his or her sentence or until the offender attains seventy years of age, and has  
34 served at least forty percent of the sentence imposed, whichever occurs first.

35           3. Other provisions of the law to the contrary notwithstanding, any  
36 offender who has pleaded guilty to or has been found guilty of a dangerous felony  
37 as defined in section 556.061, RSMo, and is committed to the department of  
38 corrections shall be required to serve a minimum prison term of eighty-five  
39 percent of the sentence imposed by the court or until the offender attains seventy  
40 years of age, and has served at least forty percent of the sentence imposed,  
41 whichever occurs first.

42           4. For the purpose of determining the minimum prison term to be served,  
43 the following calculations shall apply:

44           (1) A sentence of life shall be calculated to be thirty years;

45           (2) Any sentence either alone or in the aggregate with other consecutive  
46 sentences for crimes committed at or near the same time which is over  
47 seventy-five years shall be calculated to be seventy-five years.

48           5. For purposes of this section, the term "minimum prison term" shall  
49 mean time required to be served by the offender before he or she is eligible for  
50 parole, conditional release or other early release by the department of corrections.

51           6. (1) A sentencing advisory commission is hereby created to consist of  
52 eleven members. One member shall be appointed by the speaker of the  
53 house. One member shall be appointed by the president pro tem of the  
54 senate. One member shall be the director of the department of corrections. Six  
55 members shall be appointed by and serve at the pleasure of the governor from  
56 among the following: the public defender commission; private citizens; a private  
57 member of the Missouri Bar; the board of probation and parole; and a  
58 prosecutor. Two members shall be appointed by the supreme court, one from a  
59 metropolitan area and one from a rural area. All members shall be appointed to  
60 a four-year term. All members of the sentencing commission appointed prior to  
61 August 28, 1994, shall continue to serve on the sentencing advisory commission  
62 at the pleasure of the governor.

63           (2) The commission shall study sentencing practices in the circuit courts  
64 throughout the state for the purpose of determining whether and to what extent  
65 disparities exist among the various circuit courts with respect to the length of  
66 sentences imposed and the use of probation for offenders convicted of the same  
67 or similar crimes and with similar criminal histories. The commission shall also  
68 study and examine whether and to what extent sentencing disparity among  
69 economic and social classes exists in relation to the sentence of death and if so,  
70 the reasons therefor, if sentences are comparable to other states, if the length of  
71 the sentence is appropriate, and the rate of rehabilitation based on sentence. It  
72 shall compile statistics, examine cases, draw conclusions, and perform other  
73 duties relevant to the research and investigation of disparities in death penalty  
74 sentencing among economic and social classes.

75           (3) The commission shall establish a system of recommended sentences,  
76 within the statutory minimum and maximum sentences provided by law for each  
77 felony committed under the laws of this state. This system of recommended

78 sentences shall be distributed to all sentencing courts within the state of  
79 Missouri. The recommended sentence for each crime shall take into account, but  
80 not be limited to, the following factors:

81 (a) The nature and severity of each offense;  
82 (b) The record of prior offenses by the offender;  
83 (c) The data gathered by the commission showing the duration and nature  
84 of sentences imposed for each crime; and

85 (d) The resources of the department of corrections and other authorities  
86 to carry out the punishments that are imposed.

87 (4) The commission shall study alternative sentences, prison work  
88 programs, work release, home-based incarceration, probation and parole options,  
89 and any other programs and report the feasibility of these options in Missouri.

90 (5) The commission shall publish and distribute its recommendations on  
91 or before July 1, 2004. The commission shall study the implementation and use  
92 of the recommendations until July 1, 2005, and return a report to the governor,  
93 the speaker of the house of representatives, and the president pro tem of the  
94 senate. Following the July 1, 2005, report, the commission shall revise the  
95 recommended sentences every two years.

96 (6) The governor shall select a chairperson who shall call meetings of the  
97 commission as required or permitted pursuant to the purpose of the sentencing  
98 commission.

99 (7) The members of the commission shall not receive compensation for  
100 their duties on the commission, but shall be reimbursed for actual and necessary  
101 expenses incurred in the performance of these duties and for which they are not  
102 reimbursed by reason of their other paid positions.

103 (8) The circuit and associate circuit courts of this state, the office of the  
104 state courts administrator, the department of public safety, and the department  
105 of corrections shall cooperate with the commission by providing information or  
106 access to information needed by the commission. The office of the state courts  
107 administrator will provide needed staffing resources.

108 7. Courts shall retain discretion to lower or exceed the sentence  
109 recommended by the commission as otherwise allowable by law, and to order  
110 restorative justice methods, when applicable.

111 8. If the imposition or execution of a sentence is suspended, the court may  
112 order any or all of the following restorative justice methods, or any other method  
113 that the court finds just or appropriate:

114 (1) Restitution to any victim or a statutorily created fund for costs  
115 incurred as a result of the offender's actions;

116 (2) Offender treatment programs;

117 (3) Mandatory community service;

118 (4) Work release programs in local facilities; and

119 (5) Community-based residential and nonresidential programs.

120 9. The provisions of this section shall apply only to offenses occurring on  
121 or after August 28, 2003.

122 10. Pursuant to subdivision (1) of subsection 8 of this section, the court  
123 may order the assessment and payment of a designated amount of restitution to  
124 a county law enforcement restitution fund established by the county commission  
125 pursuant to section 50.565, RSMo. Such contribution shall not exceed three  
126 hundred dollars for any charged offense. Any restitution moneys deposited into  
127 the county law enforcement restitution fund pursuant to this section shall only  
128 be expended pursuant to the provisions of section 50.565, RSMo.

129 11. A judge may order payment to a restitution fund only if such fund had  
130 been created by ordinance or resolution of a county of the state of Missouri prior  
131 to sentencing. A judge shall not have any direct supervisory authority or  
132 administrative control over any fund to which the judge is ordering a defendant  
133 to make payment.

134 12. A defendant who fails to make a payment to a county law enforcement  
135 restitution fund may not have his or her probation revoked solely for failing to  
136 make such payment unless the judge, after evidentiary hearing, makes a finding  
137 supported by a preponderance of the evidence that the defendant either willfully  
138 refused to make the payment or that the defendant willfully, intentionally, and  
139 purposefully failed to make sufficient bona fide efforts to acquire the resources  
140 to pay.

559.115. 1. Neither probation nor parole shall be granted by the circuit  
2 court between the time the transcript on appeal from the offender's conviction has  
3 been filed in appellate court and the disposition of the appeal by such court.

4 2. Unless otherwise prohibited by subsection 5 **or** 6 of this section, a  
5 circuit court only upon its own motion and not that of the state or the offender  
6 shall have the power to grant probation to an offender anytime up to one hundred  
7 twenty days after such offender has been delivered to the department of  
8 corrections but not thereafter. The court may request information and a  
9 recommendation from the department concerning the offender and such offender's

10 behavior during the period of incarceration. Except as provided in this section,  
11 the court may place the offender on probation in a program created pursuant to  
12 section 217.777, RSMo, or may place the offender on probation with any other  
13 conditions authorized by law.

14         3. The court may recommend placement of an offender in a department  
15 of corrections one hundred twenty-day program. Upon the recommendation of the  
16 court, the department of corrections shall determine the offender's eligibility for  
17 the program, the nature, intensity, and duration of any offender's participation  
18 in a program and the availability of space for an offender in any program. When  
19 the court recommends and receives placement of an offender in a department of  
20 corrections one hundred twenty-day program, the offender shall be released on  
21 probation if the department of corrections determines that the offender has  
22 successfully completed the program except as follows. Upon successful completion  
23 of a treatment program, the board of probation and parole shall advise the  
24 sentencing court of an offender's probationary release date thirty days prior to  
25 release. The court shall release the offender unless such release constitutes an  
26 abuse of discretion. If the court determined that there is an abuse of discretion,  
27 the court may order the execution of the offender's sentence only after conducting  
28 a hearing on the matter within ninety to one hundred twenty days of the  
29 offender's sentence. If the court does not respond when an offender successfully  
30 completes the program, the offender shall be released on probation. Upon  
31 successful completion of a shock incarceration program, the board of probation  
32 and parole shall advise the sentencing court of an offender's probationary release  
33 date thirty days prior to release. The court shall follow the recommendation of  
34 the department unless the court determines that probation is not appropriate. If  
35 the court determines that probation is not appropriate, the court may order the  
36 execution of the offender's sentence only after conducting a hearing on the matter  
37 within ninety to one hundred twenty days of the offender's sentence. If the  
38 department determines that an offender is not successful in a program, then after  
39 one hundred days of incarceration the circuit court shall receive from the  
40 department of corrections a report on the offender's participation in the program  
41 and department recommendations for terms and conditions of an offender's  
42 probation. The court shall then release the offender on probation or order the  
43 offender to remain in the department to serve the sentence imposed.

44         4. If the department of corrections one hundred twenty-day program is  
45 full, the court may place the offender in a private program approved by the

46 department of corrections or the court, the expenses of such program to be paid  
47 by the offender, or in an available program offered by another organization. If  
48 the offender is convicted of a class C or class D nonviolent felony, the court may  
49 order probation while awaiting appointment to treatment.

50         5. Except when the offender has been found to be a predatory sexual  
51 offender pursuant to section 558.018, RSMo, the court shall request that the  
52 offender be placed in the sexual offender assessment unit of the department of  
53 corrections if the defendant has pleaded guilty to or has been found guilty of  
54 sexual abuse when classified as a class B felony.

55         **6. In any case when the offender has pled guilty to or been found**  
56 **guilty of violating sections 195.211 to 195.223, RSMo, when classified as**  
57 **a class A or B felony and when such offense involves methamphetamine,**  
58 **its salts, isomers, and salts of isomers, or a methamphetamine**  
59 **precursor drug as defined in section 195.010, RSMo, no offender shall**  
60 **be eligible for parole or probation until he or she has served a**  
61 **minimum of one hundred twenty days imprisonment in the department**  
62 **of corrections.**

63         7. Unless the offender is being granted probation pursuant to successful  
64 completion of a one hundred twenty-day program the circuit court shall notify the  
65 state in writing when the court intends to grant probation to the offender  
66 pursuant to the provisions of this section. The state may, in writing, request a  
67 hearing within ten days of receipt of the court's notification that the court intends  
68 to grant probation. Upon the state's request for a hearing, the court shall grant  
69 a hearing as soon as reasonably possible. If the state does not respond to the  
70 court's notice in writing within ten days, the court may proceed upon its own  
71 motion to grant probation.

72         [7. An offender's first incarceration for one hundred twenty days for  
73 participation in a department of corrections program prior to release on probation  
74 shall not be considered a previous prison commitment for the purpose of  
75 determining a minimum prison term under the provisions of section 558.019,  
76 RSMo.]

77         8. Notwithstanding any other provision of law, probation may not be  
78 granted pursuant to this section to offenders who have been convicted of murder  
79 in the second degree pursuant to section 565.021, RSMo; forcible rape pursuant  
80 to section 566.030, RSMo; forcible sodomy pursuant to section 566.060, RSMo;  
81 statutory rape in the first degree pursuant to section 566.032, RSMo; statutory



82 sodomy in the first degree pursuant to section 566.062, RSMo; child molestation  
83 in the first degree pursuant to section 566.067, RSMo, when classified as a class  
84 A felony; abuse of a child pursuant to section 568.060, RSMo, when classified as  
85 a class A felony; an offender who has been found to be a predatory sexual offender  
86 pursuant to section 558.018, RSMo; or any offense in which there exists a  
87 statutory prohibition against either probation or parole.

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Bill

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